HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 994 OF 2006

Sumit Singh
Aged About 8 years (minor),
S/o Sri Anil Singh,
Through his father and natural guardian Anil singh,
S/o late Sri Balbir Singh,
R/o Ward No. 1, Gadarpur,
District- Udham Singh Nagar. .....Applicants

Vs.

1. State of Uttaranchal.
2. Gulshan Rani, W/o late Sri Ram Lal Gandhi, R/o Ward No. 7, Punwani Gali, Gadarpur, Police-Station Gadarpur, District- Udham Singh Nagar.

.....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri S.K. Mandal, counsel for the applicant and A.G.A. for the State.

By the present application filed under Section 482 of the Code of Criminal Procedure, the applicant has prayed for quashing the Charge-sheet dated 13.07.2006 and cognizance Order dated 04.08.2006 in Criminal Case No. 36 of 2006 U/s 304 (I) I.P.C. arising out of Case Crime No. 742 of 2005 Police Station-Gadarpur, District-Udham Singh Nagar. Further prayer has been made for staying the operation of the Cognizance order dated 04.08.2006 and further proceedings in Criminal Case No. 36 of 2006 U/s 304 (I) I.P.C.

Briefly stated, applicant was playing with the deceased on the dated of alleged incident and during

playing with the deceased, the gun got fired and the deceased has succumbed to injury on the spot.

At the time of the incident, the age of the applicant-accused was under 7 years as will appear from the Birth Certificate (Annexure No. 2 to the affidavit filed along with the 482 application) and the date of birth of the deceased was 12 years.

Applicant filed a Writ petition No. 804 of 2006 (MB) Sumti Singh Vs. State of Uttaranchal. On 10.07.2006. this Court stayed the arrest of the petitioner.

On 13.07.2006, the charge sheet has been submitted by the Investigation Officer under Section 304-I I.P.C. stating therein that the offence under Section 302 of the I.P.C. is not made out as the applicant is minor.

On 04.08.2006, Chief Judicial Magistrate took cognizance on the charge-sheet and sent the case before the Juvenile Justice Board fixing 01.09.2006.

Section 82 and 83 of the Indian Penal Code provides that nothing is an offence which is done by a child under seven years of age. The same reads as under:

> *"82. Act of a child under seven years of age.- Nothing is an offence which is done by a child under seven years of age.*
>
> *83. Act of a child above seven and under twelve of immature understanding.- Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion."*

Section 12 of the Juvenile Justice (Care and protection of Children) Act, 2000 provides as under:

"12. Bail of juvenile.- (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order."

In ***Medchl Chemicals and Pharma (P) Ltd. v. Biological E. Ltd. and others (2003) 3 SCC 269,*** the Apex Court has been observed as under:

"19. Considering the factual aspect of the matter, we unhesitatingly state, however, that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. We, thus, without expressing any opinion on the merits of the case allow the appeal and set aside the impugned order of the high Court and restore the complaint. The learned trial Magistrate shall proceed with

the complaint and dispose of the same in accordance with the law with utmost expedition. Be it clarified however that observation as above in this judgment be not taken as an expression of any opinion of ours."

In view of the aforesaid the applicant is directed to present himself before the Magistrate concerned who shall consider the release of the applicant and the applicant shall ensure his presence by furnishing personal bond as well as sureties to the satisfaction of the Magistrate concerned for his regular appearance in the case.

Subject to the observations made above, application under Section 482 Cr.P.C. is disposed of.

(Rajesh Tandon, J.)

06.12. 2006

Rathour.